

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 371 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO
1 to 5 No

COMMISSIONER-RAJKOT MUNICIPAL CORPORATION

Versus

DRIVER OF THE VEHICLE IN QUESTION

Appearance:

MR BP TANNA for Petitioner

MR DARSHAN M PARIKH for Respondent No. 2

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 10/08/2000

C.A.V. JUDGEMENT

Heard the learned counsel for the parties. This appeal is preferred from the order below application at Ex.1 in Miscellaneous Civil Application No.444 of 1992 whereby the application was partly allowed and the

appellant was ordered to pay Rs.12,000/- with interest at the rate of 15% under Section 140 of the Motor Vehicles Act.

2. The appellant has filed this appeal on the grounds that, by the impugned order, the learned Judge of the Motor Accident Claims Tribunal, Rajkot has awarded the amount of interim compensation without deciding the issue regarding liability of the appellant and without recording any evidence. It is further submitted that even the policy of insurance of the vehicle involved in the accident was not produced and yet the liability of the appellant, and not the insurance company, is fixed on the assumption that the risk of a passenger was not covered by the policy.

3. Going through the impugned order, it appears that the policy of insurance was produced before the learned Tribunal and the claimant had admitted in his pleadings that he was travelling in the vehicle of the appellant as a passenger on payment of charges. The impugned order is made under Section 140 of the Motor Vehicles Act for interim award of compensation on account of injuries and permanent disabilities which were, prima facie, established by panchnama and injury certificate of the Government Hospital.

4. Where an application under Section 140 of the Motor Vehicle Act is made for interim award of compensation, the liability of the owner of the vehicle arises on the principle of "no fault". It is held by this Court in NEW INDIA ASSURANCE CO. LTD. v. MINOR SANJAY VAJUBHAI [1999 (1) GLR 403] that the findings given by the Tribunal in the case of awarding interim compensation are not final and the main matter would be decided on merits. It would be, therefore, open for the parties to canvass their respective cases on the basis of the evidence that may eventually come on record and the amount of interim compensation can also be adjusted or appropriate directions in respect thereof for reimbursement can also be given if it is ultimately held that a different party was liable to pay the compensation under the policy of insurance or otherwise. In the facts and circumstances of this case, the Tribunal has passed a just and reasonable order to which no exception can be taken.

5. In the result, the appeal fails and the same is dismissed with no order as to costs.

(KMG Thilake)

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